

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Sennheiser Electronic Corporation	)	File No. EB-08-SE-659
	)	NAL/Acct. No. 200932100056
	)	FRN 0007220122
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: May 7, 2009****Released: May 11, 2009**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture and Order* ("NAL"), we find Sennheiser Electronic Corporation ("Sennheiser") apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000) for willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended ("Act"),<sup>1</sup> and Section 2.803(a) of the Commission's Rules ("Rules").<sup>2</sup> The apparent violation involves Sennheiser's marketing of unauthorized radio frequency devices.

**II. BACKGROUND**

2. In July 2008, the Enforcement Bureau ("Bureau") Spectrum Enforcement Division ("Division") began an investigation into Sennheiser's marketing of wireless microphones. In a letter of inquiry ("LOI") dated August 15, 2008, the Division instructed Sennheiser to provide specific information regarding the manufacture, marketing, and the certification status of the wireless microphone systems it sells.<sup>3</sup> In its September 15, 2008, response to the LOI, Sennheiser indicates that, while preparing its response, it discovered that one of its wireless microphones did not have a valid certification.<sup>4</sup>

3. By LOI dated February 9, 2009, the Division sought further information regarding the uncertified wireless microphone that Sennheiser referenced in its first LOI response.<sup>5</sup> In its response, Sennheiser indicates that, within the past year, it manufactured and sold units of an uncertified wireless

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<sup>1</sup> 47 U.S.C. § 302a(b).

<sup>2</sup> 47 C.F.R. § 2.803(a).

<sup>3</sup> Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to John Falcone, President and CEO, Sennheiser Electronic Corporation. (August 15, 2008).

<sup>4</sup> Letter from Mitchell Lazarus, Counsel for Sennheiser Electronic Corporation, to Marlene H. Dortch, Esq., Secretary, Federal Communications Commission (September 15, 2008) ("LOI Response"), at 3.

<sup>5</sup> Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, to John Falcone, President and CEO, Sennheiser Electronic Corporation. (February 9, 2009).

microphone in the United States.<sup>6</sup> Sennheiser's response also indicates that it has discontinued marketing the device in the United States. Sennheiser notes that the device was assigned several model numbers according to the frequencies on which it operates.<sup>7</sup> Sennheiser asserts that the company inadvertently allowed a pending application for certification to lapse, while its marketing department assumed the application had been granted.<sup>8</sup> It states that the violation was "related wholly to the paperwork, not to the underlying properties of the device."<sup>9</sup> Sennheiser notes that it has changed its procedures to ensure that a similar error does not happen in the future.<sup>10</sup>

### III. DISCUSSION

#### A. Marketing of Unauthorized Equipment

4. Section 302(b) of the Act provides that "[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section." Section 2.803(a)(1) of the Rules provides that:

Except as provided elsewhere in this section, no person shall sell or lease, or offer for sale or lease (including *advertising* for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device<sup>11</sup> unless ... [i]n the case of a device that is subject to certification, such device has been authorized by the Commission in accordance with the rules in this chapter and is properly identified and labeled as required by § 2.925 and other relevant sections in this chapter [*emphasis added*].

As intentional radiators,<sup>12</sup> wireless microphones are required by Section 15.201 of the Rules<sup>13</sup> to be approved prior to marketing through the equipment certification<sup>14</sup> procedures described in Sections 2.1031 – 2.1060 of the Rules.<sup>15</sup>

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<sup>6</sup> Letter from Mitchell Lazarus, Counsel for Sennheiser Electronic Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission. (February 24, 2009) ("Second LOI Response"). Pursuant to Section 0.459 of the Rules, 47 C.F.R. § 0.459, Sennheiser requests confidentiality of certain information in its Second LOI Response, including the number of units of the uncertified wireless microphone manufactured and distributed in the U.S. and the dates on which the device was manufactured and distributed, asserting that disclosure of this information would cause substantial competitive harm. *Id.* at 3. Although we do not rule on Sennheiser's confidentiality request at this time, we will not disclose this information herein.

<sup>7</sup> Specifically, Sennheiser states that this device was marketed under the following three model numbers: SKM3072-U 470/600, SKM3072-U 574/702, and SKM3072-U 678/814. *Id.* at Attachment A.

<sup>8</sup> *Id.* at 2.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> 47 C.F.R. § 2.801 defines a radiofrequency device as "any device which in its operation is capable of emitting radiofrequency energy by radiation, conduction, or other means."

<sup>12</sup> An intentional radiator is "[a] device that intentionally generates and emits radio frequency energy by radiation or induction." 47 C.F.R. § 15.3 (o).

<sup>13</sup> 47 C.F.R. § 15.201.

<sup>14</sup> A certification is an equipment authorization issued by the Commission, based on representations and test data submitted by the applicant. *See* 47 C.F.R. § 2.907(a).

5. Sennheiser admits that it manufactured and sold units of a wireless microphone in the United States within the past year. Sennheiser further admits that the device was not certified prior to marketing in the United States. Accordingly, we find that Sennheiser apparently marketed<sup>16</sup> uncertified radio frequency devices in willful<sup>17</sup> and repeated<sup>18</sup> violation of Section 302(b) of the Act and Section 2.803(a) of the Rules.

### B. Proposed Forfeiture

6. Section 503(b) of the Act authorizes the Commission to assess a forfeiture for each willful or repeated violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.<sup>19</sup> In exercising such authority, we are required to take into account “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>20</sup>

7. Section 503(b)(6) of the Act bars the Commission from proposing a forfeiture for violations that occurred more than a year prior to the issuance of a Notice of Apparent Liability.<sup>21</sup> Section 503(b)(6) does not, however, bar the Commission from assessing whether Sennheiser’s conduct prior to that time period apparently violated the provisions of the Act and Rules and from considering such conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period.<sup>22</sup> Thus, while we may consider the fact that Sennheiser’s conduct commenced more than

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<sup>15</sup> 47 C.F.R. §§ 2.1031 – 2.1060.

<sup>16</sup> Marketing, as defined in 47 C.F.R. § 2.803(e)(4), “includes sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment, or distribution for the purpose of selling or leasing or offering for sale or lease.”

<sup>17</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act ....” See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California*”).

<sup>18</sup> Section 312(f)(2) of the Act provides that “[t]he term ‘repeated’, ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2). See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 (2001) (“*Callais Cablevision*”) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage).

<sup>19</sup> 47 U.S.C. § 503(b).

<sup>20</sup> 47 U.S.C. § 503(b)(2)(E). See also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

<sup>21</sup> 47 U.S.C. § 503(b)(6).

<sup>22</sup> See 47 U.S.C. § 503(b)(2)(D), 47 C.F.R. § 1.80(b)(4); see also *Behringer USA, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 1820, 1825 (2006), *forfeiture ordered*, 22 FCC Rcd. 1051 (2007) (forfeiture paid); *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-71 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 RR 2d 1386, 1388 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC 2d 37 (1967), *recon. den.*, 11 FCC 2d 193 (1967); *Bureau D’Electronique Appliquee, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 3445, 3447-48 (Enf. Bur., Spectrum Enf. Div. 2005), *forfeiture ordered*, 20 FCC Rcd 17893 (Enf. Bur., Spectrum Enf. Div. 2005) (forfeiture paid).

one year ago, the forfeiture amount we propose herein relates only to Sennheiser's apparent violations that have occurred within the past year.

8. Pursuant to the Commission's *Forfeiture Policy Statement*<sup>23</sup> and Section 1.80 of the Rules,<sup>24</sup> the base forfeiture amount for the marketing of unauthorized equipment is \$7,000. At the time of Sennheiser's apparent violation, Section 503(b)(2)(D) of the Act authorized the Commission to assess a maximum forfeiture of \$11,000 for each violation, or each day of a continuing violation, up to a statutory maximum forfeiture of \$97,500 for any single continuing violation.<sup>25</sup>

9. Based on the record before us, and having considered the statutory factors set forth above, we conclude that no upward or downward adjustment of the forfeiture from the base amount of \$7,000 is warranted. Concerning Sennheiser's claim that it inadvertently marketed the device prior to grant of certification, the Commission has long held that a downward adjustment of a forfeiture is not justified where violators claim their actions or omissions were due to inadvertent errors.<sup>26</sup> Accordingly, we conclude that Sennheiser is apparently liable for a \$7,000 forfeiture for marketing an uncertified radio frequency device in willful and repeated violation of Section 302(b) of the Act and Section 2.803(a) of the Rules.

#### IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules,<sup>27</sup> Sennheiser Electronic Corporation, is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seven thousand dollars (\$7,000) for marketing an uncertified radio frequency device in willful and repeated violation of Section 302(a) of the Act and Section 2.803(a) of the Rules.

11. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Sennheiser Electronic Corporation, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

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<sup>23</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999).

<sup>24</sup> 47 C.F.R. § 1.80.

<sup>25</sup> 47 U.S.C. § 503(b)(2)(D). The Commission has amended Section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), three times to increase the maximum forfeiture amounts, in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. *See Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 15 FCC Rcd 18221 (2000) (adjusting the maximum statutory amounts from \$10,000/\$75,000 to \$11,000/\$87,500); *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 19 FCC Rcd 10945 (2004) (adjusting the maximum statutory amounts from \$11,000/\$87,500 to \$11,000/\$97,500); *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 23 FCC Rcd 9845 (2008) (adjusting the maximum statutory amounts from \$11,000/\$97,500 to \$16,000/\$112,500). The most recent inflation adjustment took effect September 2, 2008. *See* 73 Fed. Reg. 44663-5. Sennheiser's apparent violations occurred prior to this date and therefore are subject to the old statutory forfeiture limits.

<sup>26</sup> *See e.g., PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992); *Southern California*, 6 FCC Rcd at 4387.

<sup>27</sup> 47 U.S.C. § 503(b), 47 C.F.R. § 1.80.

12. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures. Sennheiser will also send electronic notification on the date said payment is made to [Neal.McNeil@fcc.gov](mailto:Neal.McNeil@fcc.gov).

13. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to John Falcone, President and CEO, Sennheiser Electronic Corporation, 1 Enterprise Drive, Old Lyme, Connecticut 06371 and to Mitchell Lazarus, Fletcher Heald & Hildreth P.L.C., 11<sup>th</sup> Floor, 1300 North 17<sup>th</sup> Street, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau